

ADOT/JPA File No.: 06-120
AG Contract No.: KR07-0129TRN
Project: **R/W Permits & Road
Widening Interim TI Project**
Section: I-10 & Florence Blvd
TRACS No.: H7080 01L H7059 01X
Budget Source Item No.: N/A

JOINT PROJECT AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
WP CASA GRANDE RETAIL LLC

THIS AGREEMENT is entered into this date February 16th, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and WP CASA GRANDE RETAIL LLC, an Arizona limited liability company (the "Developer").

I. RECITALS

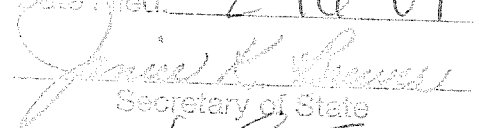
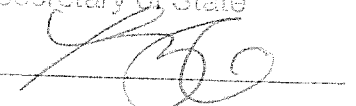
1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Developer is empowered to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Developer.

3. The Developer is requesting right-of-way permits from ADOT, to construct a regional shopping center in Casa Grande. The Developers construction project will impact the current bridge over the Interstate 10 located at State Route 287 (Florence Blvd). The traffic generated from the shopping center, supported by a Traffic Impact Analysis Report ("TIA") advocates the expansion of the bridge and traffic lane improvements. The State has agreed to approve and provide right-of-way permits and oversee the post-design documents from the Developer. The Developer has agreed to finance, construct and administer the expansion of the bridge and traffic lanes hereinafter referred as the "Interim TI Improvement Project", or the "Project". The widening of Florence Blvd, four new intersections including two new signalized intersections will be constructed along the proposed development. The Project will serve the short-term traffic needs of the commercial development and will also be utilized as a detour for the construction of the Future TI Improvement Project, which the State has planned for this interchange.

i. The State and the Developer mutually agree to reduce the scope of the TIA-required improvements to the traffic interchange to facilitate constructing the Future TI Improvement Project. The minimization of throwaway for the reconstruction of the Florence Blvd will provide cost savings to the Developer and to the State's Future TI Improvement Project. The Developer has agreed to contribute 10% of the estimated construction cost for the Future TI Improvements into an interest earned account with the State as referenced in JPA 06-119.

ii. The Interim TI Project (Developer) includes; widening of Florence Blvd to two lanes and one left turn lane in each direction across I-10 with four new intersections. The Interim TI Improvement Project will be constructed along the proposed development including two new signalized intersections.

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Filed with the Secretary of State
Date Filed: 2-16-07

Secretary of State
By: 

iii. The Future TI Improvement Project (State) includes; a new bridge structure over the I-10 to accommodate three through lanes and dual left turns in each direction. The Ultimate section of I-10 will consist of a total of 10 lanes with an open 84-foot median, and three through lanes and dual left turn lanes in each direction on SR 287. The cost of the Future TI Improvement Project is currently estimated at \$26,125,000.00.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Review the design documents required for construction of the Project, and provide comments to the Developer in a timely manner. Expedite approval of the final plans and construction documents for constructing the Project.

b. Allow construction of the Project within the State's right-of-way contingent upon the Developer obtaining the proper right-of-way encroachment permits to be in place prior to the construction phase of the Project.

c. Provide direction to the Developer relevant to specific engineering post-design issues developed by ADOT Construction Management oversight staff as it relates to design guidelines and construction within the State's right-of-way.

d. Provide ADOT staff and/or ADOT Project Consultants, for the oversight of the design guidelines during construction and construction administration tasks of the Project operating within the State's right-of-way. The State shall ensure the work within the States right-of-way is constructed to State standards, and oversee administrative tasks related to traffic control on SR 287 and I-10.

e. No more than quarterly, invoice the Developer for the Post-Design Review Fee and Construction Management Oversight Fee related to the Project. ADOT's Post-Design Review Fee and Construction Management Oversight Fee shall be calculated based on the time devoted to the Project by ADOT employees, including a pro rata allocation of the employee's salary and employee related expenses; ADOT's consultants project time at their ADOT approved billing rate; and ADOT's and ADOT's consultant's actual out-of-pocket expenses. In no event, will the Post-Design Review and Construction Management Oversight Fees, added together, exceed percent (1%) of the final Project contract price. ADOT's final quarterly invoice will be paid within thirty (30) days following acceptance of the Project by the State. The Developer shall be permitted to audit any books and records of the State related to calculations of the ADOT's Post Design Review Fee and/or the Construction Management Oversight Fee.

f. Review and approve in writing any proposed contract modifications, change orders, letter agreements or force account work necessary to accomplish the Project. The State will review such items within ten (10) business days after receipt of a written request from the Developer and if it objects to any such items, shall specify in writing the nature of its objection within such 10-day period.

g. Upon completion and State's acceptance of the Project, the State will maintain the Project within the State's right-of-way.

2. The Developer shall:

a. Be responsible for the funding of the Project, including all actual out of pocket costs and expenses incurred in connection with the construction, all cost increases due to change orders (which will be subject to approval by the State), Construction Management fees for ADOT to provide Construction Management oversight, (the Construction Management Oversight Fee), and Post-Design Review Fees for

ADOT staff and/or Consultants to review post-design documents (the Post-Design Review Fee) of the Project, as set forth in Paragraph II.1.e. above.

b. Retain and contract with competent professionals to prepare to State design standards, traffic studies, construction plans, specifications, material reports, drainage reports, structural reports, right of way plans, environmental documents, construction cost estimates and any other documents required for construction bidding and construction of the Project, to be completed in accordance with State policies and procedures and applicable Laws.

c. Administer the Project and cause the Project to be completed in accordance with the Final Plans of the Construction Contract and the Construction Administration Scope of Work attached hereto as Exhibit A. Be responsible for to any claims by the Contractor for extra compensation in excess of the Contract Price.

d. Pay all actual, out of pocket costs and expenses incurred in connection with the construction of the Project, including all amounts due under the Construction Contract awarded by the Developer (the "Contract Price"), all cost increases due to change orders (which will be subject to approval as provided herein), Construction Management Fees for ADOT to provide Construction Management Oversight, (the "ADOT Construction Management Oversight Fee"), and fee for the review of post-design documents (the "ADOT Post-Design Review Fee").

e. As security for the Developer's Agreement to pay the costs of constructing the Project, the Developer will provide a surety bond or letter of credit (the "Developer's Bond") that is issued by a financial institution authorized to do business in this State and that is in an amount equal to one hundred twenty-five per cent (125%) of the anticipated construction cost of the Project, including construction management and contractor's bid, pursuant to the procedures for a privately funded project as outlined in Arizona Revised Statutes Section 28-6923(k). At the Developer's request, the Developer's Bond shall be partially exonerated on a quarterly basis, so that the remaining bond equals 125% of the portion of the Project remaining to be completed, including construction change orders; except the last 12.5% of the Contract Price shall not be exonerated until the Contractor has been fully paid, all disputes resolved, and upon Project certification and acceptance by the State and payment of ADOT's invoiced fees. Furthermore the State may withhold exonerated of the Developer's Bond if Developer's contributions have not been made as required by JPA 06-119.

f. Be responsible for the donation of the additional Florence Blvd. right of way necessary for the Project Described on Exhibit A attached hereto, plus the future right-of-way needed for the future construction of the SR 287 (Florence Blvd) traffic interchange with I-10 as referenced in JPA 06-119 as Parcel B.

g. Developer shall dedicate the real property referenced in Section 2.f. above to be in fee title to the State ("Right of Way Property"), and the Developer or other owner(s) will execute Special Warranty Deeds ("Deeds") for the Right of Way Property. The Developer will deliver the Deeds to the State, along with the Title Insurance Policy reflecting the Developer or other owner(s) as owner and any encumbrances or easements which effect the area of donation prior to ADOT providing right of way clearance for the Project bid advertisement. Upon approval (by resolution) from the State Transportation Board, the State will accept jurisdiction, and maintenance of the Right of Way Property and accept the Deeds and record the Deeds and Resolution consecutively.

h. Notify the State in writing of any proposed contract modifications, change orders, letter Agreements or force account work necessary to accomplish the Project, all of which shall be subject to the State's approval, as provided below.

i. Contribute the construction costs of the State's Future TI Improvement Project as referenced in JPA 06-119. If said Developer's contributions are not made to State in a timely manner as defined in JPA 06-119, State may withhold exonerated of Developer's Bond until said contributions have been provided to State.

III. MISCELLANEOUS PROVISIONS

1. Developer assumes full responsibility and liability for the actions of Developer as they relate to this Agreement. The State assumes no financial obligation or liability under this Agreement except as set forth herein. Developer assumes full responsibility for the design, plans, specification, reports, operation and the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims of Interim TI Improvement Project.

2. The Developer shall require its contractors to name both State and ADOT as additional insured in the contractor's insurance policies. Pederson Group Inc. shall also require its contractors to name the State as additional indemnitees in Pederson Group Inc.'s contracts with its contractors.

3. Developer and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Developer, his agents, representatives, employees or subcontractors.

The **insurance requirements** herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Developer from liabilities that might arise out of the performance of the work under this contract by the Developer, its agents, representatives, employees or subcontractors, and Developer is free to purchase additional insurance.

MINIMUM SCOPE AND LIMITS OF INSURANCE: Developer shall provide coverage with limits of liability not less than those stated below:

Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

General Aggregate	\$10,000,000.00
Products-Completed Operations Aggregate	\$ 1,000,000.00
Personal and Advertising Injury	\$ 1,000,000.00
Blanket Contractual Liability-Written and Oral	\$ 1,000,000.00
Fire Legal Liability	\$ 50,000.00
Each Occurrence	\$ 1,000,000.00

The policy shall be endorsed to include the following additional insured language: "The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Developer".

Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Developer.

4. The Developer assumes full responsibility for the design concept studies, traffic studies, construction plans, specifications, material reports, drainage reports, structural reports, environmental reports, right of way plans, construction costs estimates and any other documents required for the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of Developer and that to the extent permitted by law, Developer hereby agrees to save and hold harmless and, indemnify from loss the State and ADOT, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments,

agencies, officers and employees of Developer, any of its agents, officers and employees, or any of its independent contracts. Costs incurred by the State, any of its departments, agencies, officers or employees shall include, in the event of any action, court costs, and expenses of litigation and attorneys' fees.

5. This Agreement shall become effective upon both parties signing this Agreement.
6. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
7. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by binding arbitration under the construction arbitration rules of the American Arbitration Association ("AAA") existing at the time of arbitration, but not administered by AAA, to be decided by a single arbitrator selected by the parties. To the extent necessary for resolution of an issue, claim for defense in such Arbitration, the parties consent to the joinder of any contractors or design professionals as parties to such Arbitration.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

WP Casa Grande Retail LLC
C/o WDP Partners
11411 N. Tatum Blvd
Phoenix, Arizona 85028
Phone: (602) 953-6200
Fax: (602) 953-6298

With a copy to:
Pederson Group, Inc.
1800 N. Central Avenue, Suite 1500
Phoenix, Arizona 85004
Attn: Jeff Manelis
Phone: (602) 265-2888
Fax: (602) 265-2889

10. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

11. Attached hereto and incorporated herein is the written determination of each party's legal counsel and that the Agreement is in proper form.


IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.


WP CASA GRANDE RETAIL LLC,
An Arizona limited liability company

STATE OF ARIZONA
Department of Transportation

By : THE WESTCOR COMPANY II
LIMITED PARTNERSHIP, an Arizona limited
Partnership, its Managing Member

By: MACERICH TWC II CORP., a Delaware
Corporation-its General Partner

By  2/1/07
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

Name: 

Title: Sr. V.P.

G: 06-120-Developer-WP Casa Grande Retail LLC
R/W Permits Road Widening Interim TI
Revised September 14, 2006- ly
Revised September 19, 2006 (paragraph 2.f. regarding r/w)

Revised October 26, 2006- ly
Revised December 28th, 2006 /Bob Millers comments Incorporated-ly
Revised January 16, 2007 / Greg Gentsch -ly
Revised January 25, 2007-ly
Revised January 29, 2007/John Fink review-ly

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

WP CASA GRANDE RETAIL LLC,
An Arizona limited liability company

STATE OF ARIZONA
Department of Transportation

By : THE WESTCOR COMPANY II
LIMITED PARTNERSHIP, an Arizona limited
Partnership, its Managing Member

By: MACERICH TWC II CORP., a Delaware
Corporation its General Partner

Name: [Signature]

Title: Sr. V. P.

By [Signature] 2/1/07
SAM MAROUFKHAN, P.E.
Deputy State Engineer, Development

G: 06-120-Developer-WP Casa Grande Retail LLC
R/W Permits Road Widening Interim TI
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Revised October 26, 2006- ly
Revised December 28th, 2006 /Bob Millers comments Incorporated-ly
Revised January 16, 2007 / Greg Gentsch --ly
Revised January 25, 2007-ly
Revised January 29, 2007/John Fink review-ly

APPROVED
[Signature]
Assistant Attorney General
Attorney for Department
of Transportation
Date 2/9/07

JPA 06-120

ATTORNEY APPROVAL FORM
FOR WP CASA GRANDE RETAIL LLC.

I have reviewed the attached proposed Agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODEL TRANSPORTATION DIVISION, and WP CASA GRANDE RETAIL LLC, and declare this Agreement to be in proper form and within the powers and authority granted to WP CASA GRANDE RETAIL LLC, C/o WDP Partners under the laws of the State of Arizona.

11/30/07
Date
[Signature]
Attorney

EXHIBIT "A"

Legal Description of Parcel 1

A portion of the South half of Section 24, Township 6 South, Range 6 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, described as follows:

Commencing at the Southwest corner of said Section 24;

thence South 89 degrees 55 minutes 14 seconds East along the South line of the Southwest quarter of said Section 24, a distance of 1355.30 feet (Meas.) [1355.00 feet Rec.];

thence North 00 degrees 04 minutes 46 seconds East, a distance of 40.00 feet to a point on the North line of the South 40.00 feet, said point also being the TRUE POINT OF BEGINNING;

thence continuing North 00 degrees 04 minutes 46 seconds East, a distance of 35.00 feet;

thence South 89 degrees 55 minutes 14 seconds East along the North line of the South 75.00 feet of said Southwest quarter, a distance of 259.63 feet to the North-South mid-section line of said Section 24;

thence North 44 degrees 55 minutes 49 seconds East, a distance of 63.47 feet;

thence South 89 degrees 55 minutes 14 seconds East, a distance of 86.54 feet;

thence South 44 degrees 27 minutes 35 seconds East, a distance of 63.13 feet;

thence South 89 degrees 55 minutes 14 seconds East along the North line of the South 75.00 feet of said Southwest quarter, a distance of 794.77 feet;

thence North 45 degrees 11 minutes 44 seconds East, a distance of 48.18 feet;

thence South 89 degrees 55 minutes 14 seconds East, a distance of 52.50 feet to the North-South mid-section line of said Section 24;

thence South 89 degrees 53 minutes 52 seconds East, a distance of 52.50 feet;

thence South 44 degrees 47 minutes 36 seconds East, a distance of 48.00 feet;

thence South 89 degrees 53 minutes 52 seconds East along the North line of the South 75.00 feet of the Southeast quarter of said Section 24, a distance of 749.82 feet;

thence South 00 degrees 06 minutes 08 seconds West, a distance of 35.00 feet to a line being 40.00 feet North of and parallel with the South line of the Southeast quarter of said Section 24;

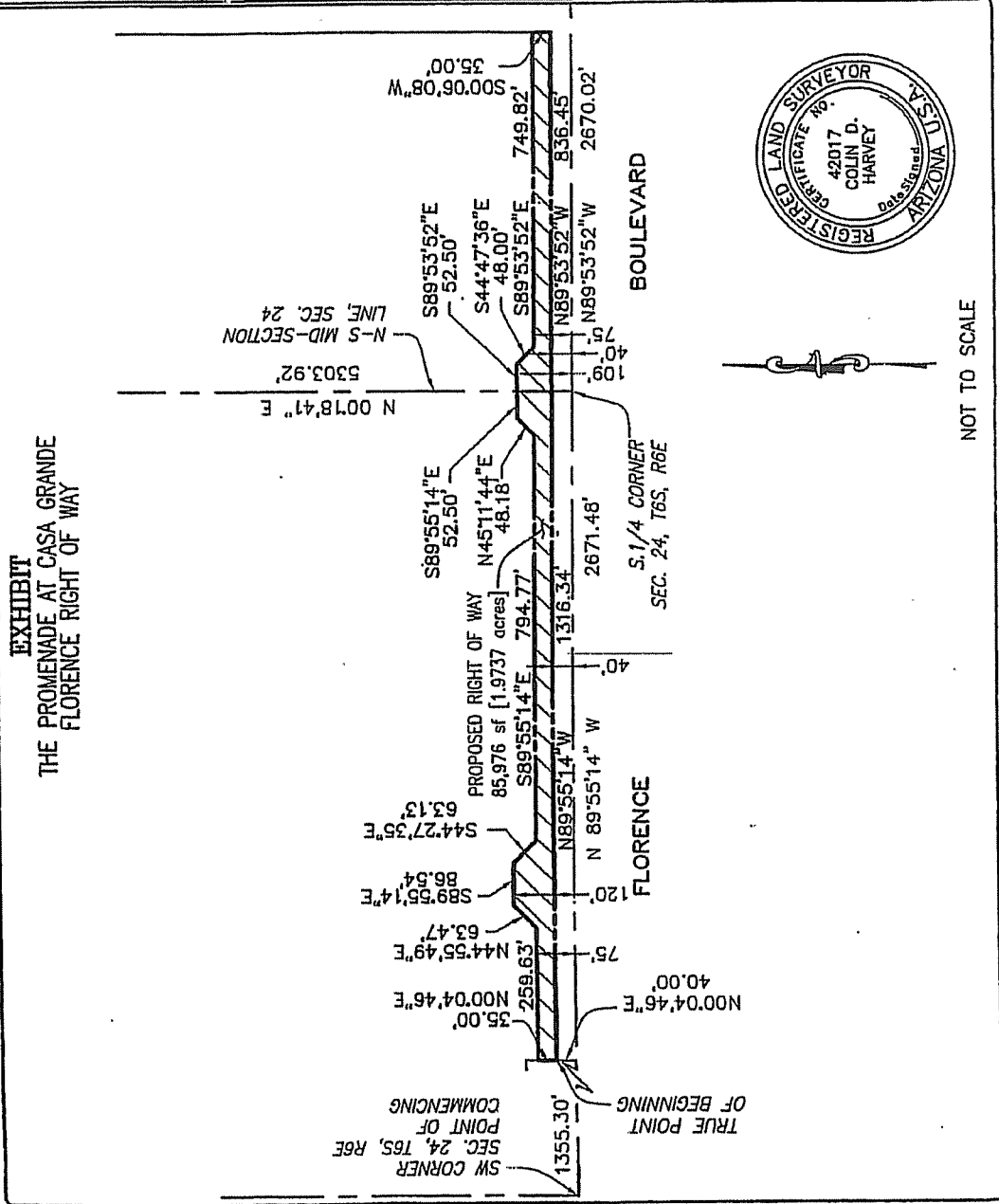


thence North 89 degrees 53 minutes 52 seconds West along said North line, a distance of 836.45 feet to said North-South mid-section line of Section 24;

thence North 89 degrees 55 minutes 14 seconds West along a line being 40.00 feet North of and parallel with the South line of the Southwest quarter of said Section 24, a distance of 1316.34 feet to the TRUE POINT OF BEGINNING.

CONTAINING 1.9737 acres [85,976 sq. ft.] more or less.

Depiction of Parcel 1



HARVEY LAND SURVEYING, INC.
461 EAST DARTMOUTH
CASA GRANDE, ARIZONA 85222
(520) 876-4786
DATE: 12/21/2006